

* The original of this document contains information which is subject to withholding from disclosure under 5 U.S.C. 552. Such material has been deleted from this copy and replaced with XXXXXX's.

January 3, 2008

DEPARTMENT OF ENERGY
OFFICE OF HEARINGS AND APPEALS

Hearing Officer's Decision

Name of Case: Personnel Security Hearing

Date of Filing: September 21, 2007

Case Number: TSO-0550

This Decision concerns the eligibility of XXXXXXXXXXXXXXXXXX (the Individual) to retain an access authorization under the Department of Energy (DOE) regulations entitled "Criteria and Procedures for Determining Eligibility for Access to Classified Matter or Special Nuclear Material."^{1/} Access authorization is defined as an administrative determination that an individual is eligible for access to classified matter or is eligible for access to, or control over, special nuclear material.^{1/} The Individual's access authorization was suspended by DOE on August 14, 2007, on the basis that the individual misrepresented information during DOE interviews conducted in 2007. After reviewing the evidence before me, I find the Individual's access authorization should not be restored.

I. Background

On July 6, 2006, the Individual reported to the police that her first government travel card had been stolen. On March 26, 2007, the Individual reported to DOE that her second government travel card had been stolen in September 2006. In October 2006, November 2006, December 2006 and January 2007, cash withdrawals were made using the Individual's second government travel card.

The Individual was interviewed by the DOE on three occasions regarding her second government travel card. The first two interviews were conducted by DOE officials investigating the matter on behalf of the DOE finance office. The third interview was a Personnel Security interview (PSI) conducted by the Local Security Office (LSO). The first

^{1/} 10 C.F.R. Part 710.

^{2/} 10 C.F.R. § 710.5(a).

interview was held on April 23, 2007. During that interview, the Individual stated that her second government travel card had been stolen. On May 9, 2007, the Individual stated that she had never used either government travel card to obtain cash advances. She also stated that she only used the government travel card for official travel. During the PSI conducted on June 4, 2007, she admitted that her previous statements that her second government travel card was stolen were not accurate and that she had used the second travel card to get cash advances for non-government uses. She stated that she failed to provide accurate information during the first two interviews because she was afraid of the DOE reaction if it learned of her misuse of her government travel card.

On August 14, 2007, the LSO issued a Notification Letter to the Individual, indicating the Individual's misuse of her government credit card and misrepresentations during the three interviews created a substantial doubt as to the Individual's eligibility for an access authorization under Criteria F ^{1/} and L.^{1/} Criterion F refers to information indicating that an individual "deliberately misrepresented, falsified, or omitted significant information from a Personnel Security Questionnaire, a Questionnaire for Sensitive (or National Security) Positions, a personnel qualifications statement, a personnel security interview, written or oral statements made in response to official inquiry on a matter that is relevant to a determination regarding eligibility for DOE access authorization."^{1/} Criterion L refers to information indicating that the Individual has "engaged in any unusual conduct or is subject to any circumstances which tend to show that the individual is not honest, reliable, or trustworthy."^{1/}

Upon receipt of the Notification Letter, the Individual requested a hearing. The OHA Acting Director appointed me as the Hearing Officer in this case.^{1/} I convened a hearing in this matter.^{1/}

At the hearing, the Individual represented herself. She offered her own testimony. The LSO entered 37 exhibits into the record.

^{3/} 10 C.F.R. § 710.8(f).

^{4/} *Id.* at § 710.8(l).

^{5/} *Id.* at § 710.8(f).

^{6/} *Id.* at § 710.8(l).

^{7/} 10 C.F.R. § 710.25(a), (b).

^{8/} 10 C.F.R. § 710.25(g).

II. The Hearing

The Individual testified that her first government travel card was stolen from her home while she was out of town in July 2006. Hearing Transcript (Tr.) at 9-10. She stated that when she returned home, some of her possessions were missing and her first government travel card had been stolen. Tr. at 11. She did not make any unauthorized purchases with her first travel card. Tr. at 10.

The Individual testified that she received her second government travel card a month or two after she reported her first one stolen. Tr. at 13. She admittedly used the second government travel card to obtain cash advances to pay bills for her elderly mother. Tr. at 17.

The Individual testified about the sequence of events surrounding her statements that her second government travel card had been stolen. In April 2007, the DOE finance office informed her that she was delinquent on paying her travel card balance. She called the police and informed them that her second travel card had been stolen. Tr. at 14-15, 18. She testified that her report to the police was designed to convince them that contractors with access to her apartment had stolen her card. Tr. at 16. She hoped the statement to the police would delay a DOE investigation into why she had not paid the balance due on her government travel card. Tr. at 18. She believed the delay would enable her to pay the outstanding balance on her account. Tr. at 18.

The Individual testified that when she was interviewed by two DOE internal affairs officers in April 2007, she told the interviewers that the second government travel card had been stolen. Tr. at 20. She testified that she did not think about the consequences of lying to these officials. Tr. at 20. She was interviewed again in May 2007 by the same internal affairs officers. Tr. at 20. She again told them that the government card was stolen. She testified that she was afraid she would lose her job if she admitted the misuse of the government travel card. Tr. at 21.

The Individual testified that, in June 2007, she began her PSI with a security specialist by maintaining that her government travel card had been stolen. Tr. at 22. She testified that, by the end of the June 2007 PSI, she admitted that her second government travel card had never been stolen. Tr. at 23. She testified that she finally told the truth because she could not eat or sleep. Tr. at 24. She stated that she had never been in trouble. Tr. at 23. The Individual testified that she was desperate for money because her mother is elderly and her brother, who has been taken care of by her mother, is handicapped and was unable to properly provide for their mother. Tr. at 29.

III. Standard of Review

Under Part 710, DOE may deny an individual's access authorization where "information is received that raises a question concerning an individual's continued access authorization eligibility."^{9/} After a question concerning an individual's eligibility for an access authorization has been properly raised, the burden shifts to the individual who must come forward with convincing factual evidence that "the grant or restoration of access authorization to the individual would not endanger the common defense and security and would be clearly consistent with the national interest." *See* 10 C.F.R. § 710.27(a).

In considering the question of the Individual's eligibility for access authorization, I have been guided by the applicable factors prescribed in the regulations: the nature, extent, and seriousness of the conduct; the circumstances surrounding the conduct, to include knowledgeable participation; the frequency and recency of the conduct; the age and maturity of the Individual at the time of the conduct; the voluntariness of the participation; the absence or presence of rehabilitation or reformation and other pertinent behavioral changes; the motivation for the conduct; the potential for pressure, coercion, exploitation, or duress; the likelihood of continuance or recurrence; and other relevant and material factors. 10 C.F.R. § 710.7(c).

IV. Findings and Conclusions

A. Criterion F

The derogatory information cited in the Notification Letter in connection with Criterion F consists of the Individual's falsifications during the two interviews conducted in April and May 2007 by DOE internal affairs officers. These interviews were not conducted to determine the Individual's continued eligibility to hold a DOE security clearance, but rather an attempt by administrative employees to determine if the Individual had misused her government travel card and falsely reported its theft. Criterion F is limited to false oral and written statements made during an access authorization proceeding. Therefore, those false statements do not properly raise a Criterion F security concern.

However, the Individual did originally lie during her June 2007 PSI. This falsification does raise a Criterion F concern. However, the Individual ultimately did admit during the PSI that her second government travel card had not been stolen and that she had falsely reported to the police that the card had been stolen. Further, the LSO did not rely on the Individual's falsification made during the PSI to support its Criterion F concern. I therefore find that the Criterion F concern has been resolved.

^{9/} 10 C.F.R. § 710.10(a).

B. Criterion L

The Individual's false statements to DOE officials, her statements to the police, and the misuse of the government travel card clearly raise a Criterion L security concern. Once a security concern has been properly raised, as it has under Criterion L, the burden shifts to the individual who must come forward with convincing evidence that "the grant or restoration of access authorization to the individual would not endanger the common defense and security and would be clearly consistent with the national interest." *See* 10 C.F.R. § 710.27(a). The DOE must rely on persons who are granted access authorization to be honest and reliable; this important principle underlies the criterion set forth in 10 C.F.R. § 710.8(l). *See Personnel Security Hearing* (Case No. VSO-0121), 26 DOE ¶ 82,775 (1996), *aff'd*, *Personnel Security Review*, 26 DOE ¶ 83,014 (1997), (*affirmed* by OSA, 1997).

After considering all the evidence before me, I find the Individual has failed to mitigate the Criterion L security concern arising from her behavior. The Individual testified that she has always been an honest person but that she was desperate because of her mother and brother's medical problems. She stated that she tried to get a payroll loan, but was unable. She felt that using her government credit card was her only option, but did not explain further. She testified that she was scared when she was interviewed by the DOE that she would lose her job if she admitted that she used her government travel card improperly. These excuses do not resolve the concern. The Individual's willingness to conceal information from the DOE in order to maintain her access authorization is simply unacceptable. *See Personnel Security Hearing*, (Case No. VSO-0013), 25 DOE ¶ 82,752 (1995), *aff'd* (OSA, 1995). In addition, the Individual did not come forward to report the adverse information on her own volition. In fact, she attempted to cover her actions by filing a false statement with the police claiming that her second government travel card had been stolen. The DOE interviewed the Individual three times before she finally admitted her second government travel card was not stolen. Finally, the Individual's mis-statements were intentional and recent. I find that the concern raised by the Individual's mis-statements to DOE officials during the April and May 2007 interviews have not been mitigated by the Individual. *Personnel Security Hearing* (Case No. VSO-0281), 27 DOE ¶ 82,821 (1999), *affirmed*, 27 DOE ¶ 83,030 (OHA April 10, 2000), *terminated* (OSA May 30, 2000); *Personnel Security Hearing* (Case No. VSO-0099), 26 DOE ¶ 82,759 (1996), (*affirmed* OSA 1996).

V. Conclusion

I find that Criterion F concern raised by the Individual's conduct was sufficiently mitigated. However, the Criterion L security concern was not mitigated. Therefore, the Individual has not shown that restoring her access authorization would not endanger the common defense and security, and restoring her access authorization would be consistent with the national interest. 10 C.F.R. § 710.27(a). Consequently, it is my decision that the

Individual's access authorization should not be restored. The Individual may seek review of this decision by an Appeal Panel. 10 C.F.R. § 710.28(b)-(e).

Janet R. H. Fishman
Hearing Officer
Office of Hearings and Appeals

Date: January 3, 2008